

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.8965 of 2017&

W.M.P.No.9874 of 2017

A.Amalraj

.. Petitioner

Vs

1. The Secretary to Government
of TamilNadu,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai.

2. The Commissioner of Municipal
Administration,
Chepauk, Chennai.

3. The Commissioner,
Coimbatore Corporation,
Coimbatore.

4.V.Saravanan,
Assistant Commissioner,
(In-charge) North Zone,
No.27, Dr.Radhakrishnan Road,
Gandhipuram, Coimbatore-12

5.R.Mohanasundari,
Assistant Commissioner,
(In-charge) Central Zone,
Door No.E-14, Corporation Quarters,
Dharmaraja Koil Street,
Muniyappan Lane backside,
Coimbatore.

.. Respondents

(R4 & 5 are impleaded as per the order of
this Court dated 27.07.2017
in WMP.Nos.16186 & 16187 of 2017)

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the first respondent to consider and pass final orders on the proposal submitted by the third respondent in proceedings dated Na.Ka.No.8362/2014/MC.2 dated 13.11.2014 regarding appointment of the petitioner as Assistant Commissioner (Personnel) in the Coimbatore Corporation.

For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.S.Gunasekaran
Additional Govt. Pleader (for R1 & R2)

: Mr.K. Magesh (for R3)

For 4th & R5 : Mr.Ravi Shanmugam

O R D E R

The relief sought for in this writ petition is for a direction to the first respondent to pass final orders on the proposal submitted by the third respondent in proceedings dated 13.11.2014.

2.The learned counsel for the writ petitioner contended that a detailed proposal prepared by the third respondent was sent to the first respondent by proceedings in Na.Ka.No.8362/2014/MC.2 dated 13.11.2014. In the said proposal, certain relaxations are sought for in respect of the appointment of the writ petitioner as Assistant Commissioner in the Corporation. The learned counsel also contended that as far as Trichy, Coimbatore, Madurai and Thirunelveli Municipal Corporations are concerned, such relaxations were extended in favour of several individuals and accordingly the candidates, who worked as Secretary to the Council, were appointed as Assistant Commissioners, by relaxing the required Rules in this regard. Thus, the writ petitioner is also entitled for such relaxation on par with other similarly placed persons in other Corporations. Though the similar issue was earlier considered by the Government, the learned counsel urged this Court, that it is suffice if the Government considers the proposal and take a decision on that. In other words, the learned counsel states that the writ petitioner is not insisting for any favourable decision in this regard and consideration by the Government is a requisite one which exercise is to be undertaken.

3.The learned counsel for the impleaded fourth respondent strenuously opposed the contention of the learned counsel for the writ petitioner by stating that many other qualified persons in the category of Administrative Officers are awaiting for promotion to the post of Assistant Commissioner and extension of the benefit of relaxation of Rule will certainly affect the prospects of the other eligible candidates working in the Corporation. In other words, there are many qualified

persons working in the feeder category for promotion to the post of Assistant Commissioner in accordance with the Rules and their right of promotion will be denied under the Rules. Further, it is contended that the writ petitioner has no right to claim relaxation and relaxation can never be claimed as a matter of right and it is only a concession and thus this Court cannot issue any direction in this regard.

4. The learned counsel for the Corporation also opposed the contention of the learned counsel for the writ petitioner by stating that the Corporation has to decide and proceed in accordance with the Rules and the Rules can never be violated in the matter of promotions and appointments. The learned counsel further reiterated that there are many eligible candidates awaiting for promotions in the order of seniority and the right of those eligible persons has to be considered. Further, the qualified persons waiting for promotion cannot be deprived of their opportunities.

5. Considering the arguments advanced by the respective counsel, this Court is of the view that the Courts cannot be used as a special purpose vehicle to carry certain recommendations to the authorities for the purpose of redressing the claim of the writ petitioner. The legal right, which has to be established, is the basic requirement for entertaining the writ petition. A semblance of right is the minimum requirement to issue writ proceedings. In the absence of right, whatsoever, this Court cannot issue any such direction either to consider or grant any relief to the writ petitioner. No doubt, there is a provision under the Rules to grant relaxation in favour of employees. But, such relaxation ought to be granted cautiously without affecting the right of the eligible candidates under the Rules. The Rule in this regard is that, only the qualified and eligible persons alone are to be given appointment and promotion. The Rule of relaxation is only an exception and the exception can never be treated as a Rule, which ought to have been granted without affecting the right of the qualified persons waiting for promotions.

6. Thus, this Court is of the firm opinion that it is the duty mandatory on the part of the competent officials to grant appointment or promotion only in accordance with the Rules and not otherwise. This being the legal dictum repeatedly reiterated and emphasised by the Constitutional Courts, this Court is not inclined to adopt an exceptional procedure by issuing a direction either to consider or to grant relaxation in favour of the writ petitioner.

7. Accordingly, this Court does not find any merit in this writ petition and the same stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of TamilNadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.
 2. The Commissioner of Municipal Administration,
Chepauk, Chennai.
 3. The Commissioner, Coimbatore Corporation,
Coimbatore.
- + 1 cc to Mr.V. Vijayashankar, Advocate Sr.53788
+ 1 cc to Mr.K. Magesh, Advocate Sr.53409
+ 2 ccs to Mr.Ravishanmugam, Advocate Sr.53568
+ 1 cc to Government Pleader Sr.53468

W.P. No.8965 of 2017
and
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SCD(CO)
EU 5.09.17

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